

Small Business Administration

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PART 103—STANDARDS FOR CONDUCTING BUSINESS WITH SBA

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AUTHORITY: 15 U.S.C. 634, 642.

SOURCE: 61 FR 2681, Jan. 29, 1996, unless otherwise noted.

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other individual or entity representing an Applicant or Participant by conducting business with SBA. For purposes of SBA's business loan programs, the term Agent includes but is not limited to:

(1) *Lender Service Provider*: an Agent who assists the Lender with originating, disbursing, servicing, liquidating, or litigating SBA loans. The Lender bears full responsibility for all aspects of its SBA loan operation, including, but not limited to, approvals, closings, disbursements, servicing actions, and due diligence. Lender Service Providers may only receive compensation from the Lender and such compensation may not be passed on to the Applicant or paid out of SBA-guaranteed loan proceeds.

(2) *Packager*: An Agent who prepares the Applicant's application for financial assistance and is employed and compensated by the Applicant.

(3) *Loan Broker (also known as Referral Agent)*: an Agent who, on a specific transaction, either assists the Applicant in finding an SBA Lender that will be willing to make a loan to the Applicant or assists the SBA Lender in finding an Applicant. A Loan Broker may be employed and compensated by either the Applicant or the SBA Lender (but not both). Compensation paid to a Loan Broker by an SBA Lender may not be passed on to the Applicant and

may not be paid out of SBA-guaranteed loan or debenture proceeds.

(b) The term *conduct business with SBA* means:

(1) Preparing or submitting on behalf of an applicant an application for financial assistance of any kind, assistance from the Investment Division of SBA, or assistance in procurement and technical matters;

(2) Preparing or processing on behalf of a lender or a participant in any of SBA's programs an application for federal financial assistance;

(3) Participating with or communicating in any way with officers or employees of SBA on an applicant's, participant's, or lender's behalf;

(4) Acting as a lender service provider; and

(5) Such other activity as SBA reasonably shall determine.

(c) *Applicant* means any person, firm, concern, corporation, partnership, cooperative or other business enterprise applying for any type of assistance from SBA.

(d) *Participant* means a person or entity that is participating in any of the financial, investment, or business development programs authorized by the Small Business Act or Small Business Investment Act of 1958.

[61 FR 2681, Jan. 29, 1996, as amended at 85 FR 7647, Feb. 10, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80587, Dec. 14, 2020, § 103.1 was amended by revising paragraph (a); redesignating paragraph (d) as paragraph (g); and adding a new paragraph (d) and paragraphs (e) and (f), effective Mar. 27, 2021. For the convenience of the user, the added and revised text is set forth as follows:

§ 103.1 Key definitions.

(a) *Agent* means an authorized representative, including an attorney, accountant, consultant, packager, lender service provider, or any other person representing an Applicant or Participant by conducting business with SBA.

* * * * *

(d) *Lender Service Provider* means an Agent who carries out lender functions in originating, disbursing, servicing, or liquidating a specific SBA business loan or loan portfolio for compensation from the lender. SBA determines whether or not one is a "Lender Service Provider" on a loan-by-loan basis.

(e) *Packager* means an Agent who is employed and compensated by an Applicant or

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lender to prepare the Applicant's application for financial assistance from SBA. SBA determines whether or not one is a "Packager" on a loan-by-loan basis.

(f) *Referral Agent* means a person or entity who identifies and refers an Applicant to a lender or a lender to an Applicant. The Referral Agent may be employed and compensated by either an Applicant or a lender.

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§ 103.2 Who may conduct business with SBA?

(a) If you are an Applicant, a Participant, a partner of an Applicant or Participant partnership, or serve as an officer of an Applicant, Participant corporation, or limited liability company, you may conduct business with SBA without a representative.

(b) If you are an Agent, you may conduct business with SBA on behalf of an Applicant, Participant or lender, unless representation is otherwise prohibited by law or the regulations in this part or any other part in this chapter. For example, persons debarred under the SBA or Government-wide debarment regulations may not conduct business with SBA. SBA may request that any Agent supply written evidence of his or her authority to act on behalf of an Applicant, Participant, or lender as a condition of revealing any information about the Applicant's, Participant's, or lender's current or prior dealings with SBA.

§ 103.3 May SBA suspend or revoke an Agent's privilege?

The Administrator of SBA or designee may, for good cause, suspend or revoke the privilege of any Agent to conduct business with SBA. Part 134 of this chapter states the procedures for appealing the decision to suspend or revoke the privilege. The suspension or revocation remains in effect during the pendency of any administrative proceedings under part 134 of this chapter.

§ 103.4 What is "good cause" for suspension or revocation?

Any unlawful or unethical activity is good cause for suspension or revocation of the privilege to conduct business. This includes:

(a) Attempting to influence any employee of SBA or a lender, by gifts,

bribes or other unlawful or unethical activity, with respect to any matter involving SBA assistance.

(b) Soliciting for the provision of services to an Applicant by another entity when there is an undisclosed business relationship between the two parties.

(c) Violating ethical guidelines which govern the profession or business of the Agent or which are published at any time by SBA.

(d) Implying or stating that the work to be performed for an Applicant will include use of political or other special influence with SBA. Examples include indicating that the entity is affiliated with or paid, endorsed or employed by SBA, advertising using the words *Small Business Administration* or *SBA* in a manner that implies SBA's endorsement or sponsorship, use of SBA's seal or symbol, and giving a "guaranty" to an Applicant that the application will be approved.

(e) Charging or proposing to charge any fee that does not bear a necessary and reasonable relationship to the services actually rendered or expenses actually incurred in connection with a matter before SBA or which is materially inconsistent with the provisions of an applicable compensation agreement or Lender Service Provider agreement. A fee based solely on a percentage of a loan or guarantee amount can be reasonable, depending on the circumstances of a case and the services actually rendered.

(f) Engaging in any conduct indicating a lack of business integrity or business honesty, including debarment, criminal conviction, or civil judgment within the last seven years for fraud, embezzlement, theft, forgery, bribery, falsification or destruction of records, false statements, conspiracy, receiving stolen property, false claims, or obstruction of justice.

(g) Acting as an Agent (including a Lender Service Provider) for an SBA Lender and an Applicant on the same SBA business loan and receiving compensation from both the Applicant and SBA Lender. For purposes of this paragraph (g), the actions of an Agent include the actions of the Agent's Affiliates, as defined in § 121.103 of this chapter.

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(h) Violating materially the terms of any compensation agreement or Lender Service Provider agreement provided for in § 103.5.

(i) Violating or assisting in the violation of any SBA regulations, policies, or procedures of which the Applicant has been made aware.

[61 FR 2681, Jan. 29, 1996, as amended at 85 FR 7647, Feb. 10, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80587, Dec. 14, 2020, § 103.4 was amended by revising paragraph (g), effective Mar. 27, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 103.4 What is “good cause” for suspension or revocation?

* * * * *

(g) Acting as both a Lender Service Provider or Referral Agent and a Packager for an Applicant on the same SBA business loan and receiving compensation for such activity from both the Applicant and lender. A limited exception to the “two master” prohibition in this paragraph (g) exists when an Agent acts as a Packager and is compensated by the Applicant for packaging services; also acts as a Referral Agent and is compensated by the lender for those activities; discloses the referral activities to the Applicant; and discloses the packaging activities to the lender.

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§ 103.5 How does SBA regulate an Agent’s fees and provision of service?

(a) Any Applicant, Agent, or Packager must execute and provide to SBA a compensation agreement, and any Lender Service Provider must execute and provide to SBA a Lender Service Provider agreement. Each agreement governs the compensation charged for services rendered or to be rendered to the Applicant or lender in any matter involving SBA assistance. SBA provides the form of compensation agreement and a suggested form of Lender Service Provider agreement to be used by Agents.

(b) Total compensation charged by an Agent or Agents to an Applicant for services rendered in connection with obtaining an SBA-guaranteed loan must be reasonable. In cases where an Agent or Agents charge any fee to an

Applicant in excess of those specified in this part, the Agent(s) must reduce the charge and refund to the Applicant any amount in excess of the fee permitted by SBA. SBA considers the following amounts to be reasonable for the total compensation that an Applicant can be charged by one or more Agents:

(1) *For loans up to and including \$500,000:* A maximum of 3.5 percent of the loan amount, or \$10,000, whichever is less;

(2) *For loans \$500,001–\$1,000,000:* A maximum of 2 percent of the loan amount, or \$15,000, whichever is less; and

(3) *For loans over \$1,000,000:* A maximum of 1.5 percent of the loan amount, or \$30,000, whichever is less.

(c) Each Lender Service Provider must enter into a written agreement with each lender for whom it acts in that capacity. SBA will review all such agreements. Such agreements need not contain each and every provision found in the SBA’s suggested form of agreement. However, each agreement must indicate that both parties agree not to engage in any sharing of secondary market premiums, that the services to be provided are accurately described, and that the agreement is otherwise consistent with SBA requirements. Subject to the prohibition on splitting premiums, lenders have reasonable discretion in setting compensation for Lender Service Providers. However, such compensation may not be charged to an Applicant or Borrower.

[61 FR 2681, Jan. 29, 1996, as amended at 85 FR 7647, Feb. 10, 2020]

EFFECTIVE DATE NOTE: At 85 FR 80587, Dec. 14, 2020, § 103.5 was amended by revising paragraph (b) and the last sentence of paragraph (c), effective Mar. 27, 2021. For the convenience of the user, the revised text is set forth as follows:

§ 103.5 How does SBA regulate an Agent’s fees and provision of service?

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(b) Compensation agreements must provide that in cases where SBA deems the compensation unreasonable, the Agent or Packager must: Reduce the charge to an amount SBA deems reasonable, refund any sum in excess of the amount SBA deems reasonable to the Applicant, and refrain from charging

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or collecting, directly or indirectly, from the Applicant an amount in excess of the amount SBA deems reasonable.

(c) * * * However, such compensation may not be directly charged to an Applicant or Borrower.

PART 105—STANDARDS OF CONDUCT AND EMPLOYEE RESTRICTIONS AND RESPONSIBILITIES

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AUTHORITY: 5 U.S.C. 7301; 15 U.S.C. 634, 637(a)(18) and (a)(19), 642, and 645(a).

SOURCE: 61 FR 2399, Jan. 26, 1996, unless otherwise noted.

STANDARDS OF CONDUCT

§ 105.101 Cross-reference to employee ethical conduct standards and financial disclosure regulations.

In addition to this part, Small Business Administration (SBA) employees should refer to the Standards of Ethical Conduct for Employees of the Executive Branch at 5 CFR part 2635 and the regulations at 5 CFR part 2634 entitled, Executive Branch Financial Dis-

closure, Qualified Trusts and Certificates of Divestiture.

[69 FR 63922, Nov. 3, 2004]

RESTRICTIONS AND RESPONSIBILITIES RELATED TO SBA EMPLOYEES AND FORMER EMPLOYEES

§ 105.201 Definitions.

(a) *Employee* means an officer or employee of the SBA regardless of grade, status or place of employment, including employees on leave with pay or on leave without pay other than those on extended military leave. Unless stated otherwise, Employee shall include those within the category of Special Government Employee.

(b) *Special Government Employee* means an officer or employee of SBA, who is retained, appointed or employed to perform temporary duties on a full-time or intermittent basis, with or without compensation, for not to exceed 130 days during any period of 365 consecutive days.

(c) *Person* means an individual, a corporation, a company, an association, a firm, a partnership, a society, a joint stock company, or any other organization or institution.

(d) *Household member* means spouse and minor children of an employee, all blood relations of the employee and any spouse who resides in the same place of abode with the employee.

(e) *SBA Assistance* means financial, contractual, grant, managerial or other aid, including size determinations, section 8(a) participation, licensing, certification, and other eligibility determinations made by SBA. The term also includes an express decision to compromise or defer possible litigation or other adverse action.

§ 105.202 Employment of former employee by person previously the recipient of SBA Assistance.

(a) No former employee, who occupied a position involving discretion over, or who exercised discretion with respect to, the granting or administration of SBA Assistance may occupy a position as employee, partner, agent, attorney or other representative of a concern which has received this SBA